



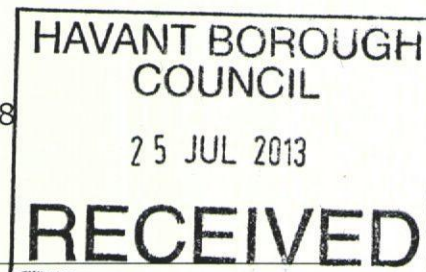
The Planning Inspectorate

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Mr R Seamer
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
Hants PO9 2AX

Your Ref: APP/12/00460
Our Ref: APP/TPO/X1735/3008
Date: 24 July 2013



Dear Mr Seamer

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012, SI No. 605
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: OCA UK LIMITED
SITE: 22 OAKMONT DRIVE, WATERLOOVILLE, HANTS PO8 8TH**

I enclose a copy of our Inspector's decision on the above appeal following the hearing on 18 June 2013.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the decision may be quashed but the case will probably be returned to the Secretary of State for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An application under Section 288 of the Town & Country Planning Act 1990 must be made to the High Court promptly and in any event within 6 weeks of the decision in question. This is an absolute time limit that cannot be extended by the Court.

A challenge must be made on one or both of the following grounds:

- (1) the decision is not within the powers of the above-cited Regulations;
- (2) any of the relevant statutory requirements have not been complied with.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought to challenge the decision have not been prejudiced.

If you have any complaints or questions about a decision, or about the way we have handled the appeal write to:

Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone No. 0303 444 5884

Or visit:

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback>

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within twenty working days.

Yours sincerely



Kevin Gordon
Environment Appeals Administration

Enc



HAVANT BOROUGH
COUNCIL

25 JUL 2013

RECEIVED

Appeal Decision

Hearing held on 18 June 2013

Site visit made on 18 June 2013

by **C A Thompson** **DiplArch DipTP Reg Arch RIBA MRTPI IHBC**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **24 JUL 2013**

Appeal Ref: APP/TPO/X1735/3008

22 Oakmount Drive, Waterlooville, Hampshire PO8 8TH

- The appeal is under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (the 2012 Regulations) against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order (TPO).
- The appeal is by Margaret MacQueen against the decision of Havant Borough Council.
- The application Ref: APP/12/00460, dated 30/4/2012, was refused by notice dated 19/11/2012.
- The work proposed is to fell to ground level (as close as practicable) and treat the stump with an appropriate herbicide, Oak T1:
- The relevant TPO, Number 429, is the Oakmount Drive, Waterlooville TPO, which was confirmed on 7/1/1972.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is made on behalf of the house owner's insurance company. The agents are OCA UK Limited Consulting Arboriculturists.
3. There was some debate about an earlier approval, to fell the same appeal tree, granted by the Council in 2005. The original application was made by the present agents, OCA, on behalf of an insurance company but for previous owners. OCA's records were not computerised at this time and they have no copy of any permission. Ms MacQueen, who along with OCA Ltd is named as the appellant for the present application /appeal, joined OCA just after the previous, then successful, application was made. The present occupiers bought the house in late 2004 (after the previous application was made but before permission to fell the tree was granted by the Council). They had no knowledge of its existence. The 2005 permission has since lapsed.

Agreed Matters

4. The professional representatives of the main parties at the Hearing agreed a number of important matters.
5. Firstly, that T1 is a mature Common Oak (*Quercus robur*). It is a vigorous specimen some 150-200 years old. It has a height of some 22m, a crown spread of about 20m (which I saw overhung London Road not the house), and a stem diameter of 1,130mm (@1.5m). The crown of the tree has been lifted slightly but otherwise it has not been extensively worked, reduced or reshaped,

instead maintaining its natural form with little dead wood. It could live for another 100 years or so.

6. Secondly, the results of the technical studies, found at Appendices 4, 5 and 6 of Ms MacQueen's proof, were accepted by the Council. The main agreed facts include the following:

- (i) the subsoil is highly shrinkable (London) clay;
- (ii) T1, is located just some 9m from the most affected, right hand back corner, of the property (looking from the front of the house) and is the likely cause of damage to the foundations /structure of N° 22;
- (iii) The house was built circa 1970. It has 1.1m deep foundations which, although accepted as being adequate at the time, are now known not to be appropriate when building on highly shrinkable clay this close to a mature Oak;
- (iv) The soil under the affected corner of the house is being subjected to an annual cycle of shrinkage and expansion in the order of +/- 22mm. The shrinkage (sinking) occurs in the summer when the soil is dried out (by a combination of the tree being in full leaf, and extracting water to grow, at a time when the weather is generally dryer) and expansion (rising) by a similar amount when the soil rehydrates in winter (when the tree is not in leaf, not abstracting water, and the weather is generally wetter);
- (v) The pattern of house subsidence and recovery is not consistent across the whole building footprint. The greatest movement is in the affected (rear) corner of the house nearest to the tree. The least movement is in the right hand front corner (looking from the front). This results in the house /foundations tipping down diagonally every summer (see *IN Front's Level Monitoring Movement Sketch* @ Appendix 6 of the Appellant's proof) and rising up again every winter.
- (vi) Modern brickwork, bedded in hard Portland cement mortar, is not able to accommodate differential movement readily. So when there is differential movement cracks appear in the above ground walls during the summer, usually around the weak points such as window corners, and these cracks tend to close-up again in winter;
- (vii) Water abstraction by the tree is going on to at least a depth of 2.5m under the house (where Oak roots have been found and identified);
- (viii) Do nothing is not an option. The annual cyclic movement will continue. Eventually the structure, which is not designed to accommodate movement, will become increasingly weakened;
- (ix) Keeping the tree will mean that parts of the house will probably need underpinning to a depth of 3.5m (1m below the depth of 2.5m where Oak roots have been found). Health and safety

concerns are unlikely to allow the normal trench /mass concrete solution (estimated to cost circa £30,000) because it would not be safe for workmen to operate in a confined, 3.5m deep, trench. Instead a more expensive solution, using piles and reinforced ground beams, is likely to be needed (estimated cost circa £80,000). These estimates do not include professional fees or temporary accommodation for the occupiers (the works have to be designed and supervised and the house will be uninhabitable during the works which could last some 3 months);

- (x) If the tree is felled there will be some resultant ground "heave" as the soil rehydrates. The range of such "heave" is estimated to be between 10mm and 40mm (most probably around 28mm). This is not likely to have any serious impact on the stability of the house. Repairs, after monitoring, are estimated to be likely to cost circa £7,500;
- (xi) Crown reduction, and /or the construction of root barriers, would not be an effective alternative to felling without the same level of underpinning as that referred to at (ix) above, and;
- (xii) It was further agreed that because of the present soil and foundation characteristics at the appeal site there was no acceptable option for on-site replacement planting (even a Silver Birch which in any event would probably not be appropriate for this location because most local trees are larger, longer lived, forest species). So the only practical options are either keep the tree, and underpin the house, or fell it without any on-site replacement planting thereby losing the tree's amenity value in this part of the housing estate.

Policy

7. TPOs aim to protect the amenity of trees in the public interest. The Appellants opined that there is a serious policy gap to cover the present situation where a tree is the probable cause of damage to a nearby house. Only more generalised extant policies exist which aim to retain trees which have a significant amenity or landscape /habitat importance. In this latter regard paragraph 118, 5th bullet point, of the National Planning Policy Framework (NPPF), and Policy DM8 of the Havant Borough Local Plan (Core Strategy) 2011 (LP), are relevant.

Main Issue

8. There was only one in this case. This was agreed to be whether the amenity value of the protected tree is sufficient to secure its retention in the light of the damage being caused to the structural stability of N° 22, and the likely high cost of necessary remedial works to the house, should the tree be retained.

Reasons

Amenity Value

9. I saw that the tree was a very fine specimen in vigorous health. There appeared to be no significant defects, indeed apart from limited crown lifting, done some years ago, there was little evidence of die-back or crown reduction.
10. London Road, onto which the appeal property backs, is a major traffic route. It is lined with mature roadside trees, hereabouts, which I was told were a remnant of a larger woodland area known as the Forest of Bere. There are some substantial leftovers of retained woodland nearby but a not insignificant number of visually important roadside trees are within private gardens close to houses; the appeal tree is one such example. The whole London Road street-picture is dominated by mature forest trees and is very attractive. The appeal Oak may be just one of many trees but nevertheless it has a significant presence and a high local amenity value.
11. Seen from within the housing estate the appeal tree is prominent as part of the "green" backdrop to this side of Oakmount Drive. Indeed, the existence of this and other "green" backdrops, outside the housing estate's built edges, are an important, and attractive, feature of this built-up area. The housing estate itself is devoid of significant internal tree planting.
12. That the appeal tree is one of a number of mature forest specimens would not make its loss any more acceptable. It might not be unique but this Oak is a big, attractive and healthy, tree with a potentially long life span. Its loss would leave a serious and obvious gap in the present line of tree canopies. Felling such an important veteran tree would not comply with the relevant policies of the NPPF or the LP which aim to protect such trees.
13. Notwithstanding that each case should be determined on its own merits there is a need for consistency in decision making. Granting consent here would make it more difficult for the Council to refuse similar applications in the surrounding area. The cumulative, long term, impact of a number of such schemes could be most damaging to the character and appearance of this part of the Borough.
14. Also the main parties agreed that it would be inappropriate, given the eminently shrinkable nature of the clay subsoil, for any replacement to be required to be planted within the curtilage of N° 22 should the protected tree be felled; (see my paragraph 6(xii) above). Requiring replacement planting elsewhere would not seem to me to protect the longer term amenity of this site or its immediate surroundings.
15. To my mind therefore, taking all this into account, the felling of the appeal Oak should be resisted strongly on amenity grounds unless there are compelling contrary reasons. This is because its loss would significantly and unacceptably damage the local environment and its enjoyment by the public.

Structural and Cost Considerations

16. Turning to the question of the structural damage being caused to N° 22, I saw that there were indeed cracks around windows and other weak points, both internally and externally, visible at the affected rear corner of the house closest to the Oak tree. These cracks were not generally as much as 5mm in width but

I was told, as a matter of fact, that they were wider before the recent period of quite heavy rain rehydrated the soil. Some windows were also distorting.

17. There is little doubt in my mind, from the agreed technical evidence and what I could see on the accompanied site visit, that the house's structural problems are a result of: the close proximity of the mature Oak; the eminently shrinkable nature of the ground, and; the inadequacy (by today's standards) of the building's foundations. On climate matters I agree with Cllr Buckley's concerns regarding the more extreme weather patterns, which appear to be developing in the UK, and the impact which these are having on some local areas of London clay. But extreme events on their own would not account for the regular annual cyclic nature of the problems found here.
18. I accept that doing nothing, allowing the annual shrinkage (subsiding) /rehydration (rising) events to continue, unconstrained, would not be a viable option. This would not only be unacceptable aesthetically, from the point of view of the occupiers, but also in the longer term such a cyclic pattern of movement is likely to significantly, and unacceptably, weaken the fabric of the house.
19. I also accept that felling the tree and killing the stump would probably be the cheapest and simplest solution to the present structural problems being caused to the house. "Heave" (that is the longer term expansion of the soil following full hydration if the tree were to be removed), in this case, is unlikely to cause serious concerns on the evidence before me.
20. I further acknowledge that any necessary underpinning, the only satisfactory long term structural solution if the tree is to be retained, is likely to be expensive (see my paragraph 6(ix)). And the Appellant (on behalf of her insurance company clients) has made it clear that in the eventuality that the tree has to be kept a claim will be made for the payment of compensation under section 202E of the Town and Country Planning Act 1990, as amended, and Part 6, Paragraph 24, of the 2012 Regulations. The Council could be liable for settling any successful such claim should one be made and upheld. But this is a matter which the Local Planning Authority took into account when making its decision to refuse the original 2012 application. Indeed, the decision was made by elected Members against an Officer recommendation, following discussion about possible compensation liability.
21. The then Chair of the relevant Council committee attended the Hearing and explained why the decision to refuse consent had been taken. Cllr Buckley told us that the tree had been protected at, or shortly after, planning permission was granted for the construction of the housing estate in the 1970s and the Committee felt strongly that the Oak should be protected in the long term. Too often, he said, Councils were pressurised, after the grant of planning permissions for development, to agree to the removal of protected trees under the threat of having to pay compensation. This approach was wrong as a matter of principle, and could have a most damaging Borough-wide, indeed Nation wide, effect if allowed to continue unchecked. Cllr Buckley indicated that the Council's changed opinion, since the granting of the now lapsed 2005 permission to fell the tree, was based on a greater awareness of the importance of retaining protected trees in an attempt to maintain the character and appearance of the Borough.

22. Mrs Pouralli, one of the joint owners of N° 22, was gracious enough to indicate that she had lived with the tree since 2004 and had no objection to it remaining as long as it wasn't damaging her house.

Overall Conclusion

23. Because underpinning would provide a satisfactory, if not cheap, technical solution to the house's structural problems, and in the light of the tree's very significant, and potentially long term, public amenity value together with the Council's acceptance of the financial risk associated with not allowing the tree to be felled, dismissing the appeal in this instance would be the right and proportionate solution. I shall, therefore, adopt this course.

Other Material Considerations

24. In reaching this conclusion I have taken into account the more intensive disruption likely to be caused to the living conditions of the occupiers of N° 22. This is regretted but any inconvenience would be temporary and is not on its own a good reason to fell such a fine protected tree. I have also considered some case-law identified by Ms MacQueen and the calculations which attempted to quantify, in money terms, the amenity value of the tree. But none of these other material considerations were compelling enough to alter my decision.

Colin A Thompson

APPEARANCES

FOR THE APPELLANT:

Ms M MacQueen BSc CBiol MSB	Consultant Arboriculturist
MICFor CEnv MAE	
Mr R Moss	House repair engineer
Mrs C Pouralli	Joint owner of N° 22
Mr B Manns	Joint owner of N° 22

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Nash	HBC Senior Planning Officer Planner
Mr B Harverson MArb	Consultant Arboriculturist
Mr R Seamer	HBC Building Surveying witness
Cllr P Buckley	HBC Elected Member
Mr J Gargett	HBC Arboriculturist (for some facts concerning the officer recommendation to grant planning permission to fell)

DOCUMENTS

- 1 Attendance List
- 2 Letter of notification of the Hearing and the list of persons notified
- 3 Appendices to Mr Harverson's Evidence
- 4 LP Policy DM8
- 5 Council record of the 2005 planning permission
- 6 Appeal Decision APP/TPO/X1735/2208
- 7 Appendices to Ms MacQueen's Evidence
- 8 Appeal decision TPO/H5390/1670

